

FILED
JAMES BONINI
CLERK
IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO

09 AUG 13 PM 3:31

U.S. DISTRICT COURT
SOUTHERN DIST. OHIO
EAST. DIV. COLUMBUS

CSX TRANSPORTATION, INC.
500 Water Street
Jacksonville, Florida 32202-4423

Plaintiff,

v.

OHIO MULCH SUPPLY, INC.
1600 Universal Rd
Columbus, OH 43207-1733

Defendant.

CIVIL ACTION
CASE NUMBER:

2 : 09 - 124

JUDGE: JUDGE FROST

MAGISTRATE JUDGE:

MAGISTRATE JUDGE KING

COMPLAINT

PARTIES

1. Plaintiff CSX Transportation Inc. ("CSX") is a corporation incorporated pursuant to the laws of Virginia and has its principal place of business in Jacksonville, Florida. CSX operates as an interstate rail carrier subject to the jurisdiction of the U.S. Surface Transportation Board, and is governed by the provisions of the Interstate Commerce Act, 49 U.S.C. § 10101, *et seq.*

2. Defendant Ohio Mulch Supply, Inc. ("Ohio Mulch") is a corporation incorporated pursuant to the laws of the state of Ohio and has its principal place of business at 1600 Universal Rd, Columbus, Ohio, 43207.

3. Ohio Mulch's registered agent, James A. Weber, is located at 2140 Advance Avenue, Columbus, Ohio, 43207.

JURISDICTION

4. Jurisdiction in this matter is based upon 28 U.S.C. § 1337 as this is a cause of action arising under the Interstate Commerce Act, 49 U.S.C. §§ 10101, *et seq.*

5. The subject matter of this action stems from railcar demurrage charges arising from the transportation of freight pursuant to applicable agreements, tariffs, and rates governing the failure to timely return rail cars into service.

VENUE

6. Venue is proper in the United States District Court for the Southern District of Ohio in that defendant Ohio Mulch conducts business within this jurisdiction consistent with the requirements of 28 U.S.C. § 1391, and all notices and communications to Ohio Mulch with respect to this dispute were directed to its offices located at 1600 Universal Rd, Douglas, Ohio, 43207.

CAUSE OF ACTION

Failure to Pay Rail Demurrage Charges

7. CSX hereby incorporates the preceding paragraphs as if set forth fully at length herein.

8. The subject matter of this action stems from railcar demurrage charges assessed pursuant to the provisions of 49 U.S.C. § 10746, and rules promulgated thereunder relating to freight car usage and distribution.

9. Beginning in May 2007 and continuing until February 2009, Ohio Mulch incurred \$72,860.00 in rail car demurrage charges, all of said charges due and owing to CSX.

10. CSX submitted invoices to Ohio Mulch for the demurrage charges that Ohio Mulch incurred.

11. The assessed demurrage charges were determined and made applicable to Ohio Mulch pursuant to tariffs, rules and rates promulgated and published in accordance with 49 U.S.C. § 10746.

12. Although demand has been made for payment of the aforementioned charges, Ohio Mulch has, thus far, failed and/or refused to pay CSX.

WHEREFORE, plaintiff CSX Transportation, Inc. respectfully demands that judgment be entered in its favor and against defendant Ohio Mulch in the amount of \$72,860.00, in addition to any additional demurrage charges, which accrue up until the time of trial, together with costs, prejudgment interest, and such other relief as the Court, may allow.

Respectfully submitted,

MAGUIRE & SCHNEIDER, LLP

By: 

Karl H. Schneider
250 Civic Center Dr
Suite 500
Columbus, OH 43215
Telephone: (614) 224-1222
Facsimile: (614) 224-1236

OF COUNSEL

Paul D. Keenan (*pro hac vice to be filed*)
Varghese M. Kurian (*pro hac vice to be filed*)
KEENAN COHEN & HOWARD P.C.
One Pitcairn Place
165 Township Line Road, Suite 2400
Jenkintown, PA 19046
Telephone: (215) 609-1110
Facsimile: (215) 609-1117

Attorneys for Plaintiff
CSX Transportation Inc.

Dated: August 13, 2009